

PARTIES

1. Plaintiff:

George Uberti

P.O. Box 5792 Santa Rosa, Ca 95404

415-948-1040

2. Defendants:

Defendant 1:

Sonoma County Board of Supervisors

575 Administrative Dr. Santa Rosa Ca. 95403

707-565-2241

Defendant 2:

Sonoma County Auditor-Controller-Treasurer-Tax Collector

585 Fiscal dr. Santa Rosa Ca. 95403

707-565-2631

VENUE

3. Venue is appropriate in this court because the events I am suing about took place in the district of Northern California.

Intradistrict Assignment

4. Because this lawsuit arose in Sonoma County, it should be assigned to the San Francisco division of this court.

Jurisdiction

5. The Single Audit Act of 1984, 31 USC Chapter 75, established requirements for audits of States, local governments, and Indian tribal governments that administer Federal financial assistance programs. 31 USC 7502(c) requires that audits performed in accordance with this section be conducted by an independent auditor in accordance with the Generally Accepted Government Auditing Standards. In 1985, the Office of Management and Budget (OMB) issued OMB Circular A-128, "Audits of State and Local Governments," to provide implementing guidance. In 1990, OMB administratively extended the single audit process to nonprofit organizations by issuing OMB Circular A-133, "Audits of Institutions of Higher Education and Other Non-Profit Organizations." On July 5, 1996, the President signed the Single Audit Act Amendments of 1996 (31 USC Chapter 75). The 1996 Amendments extended the statutory audit requirement to nonprofit organizations and substantially revised various provisions of the 1984 Act. On June 30, 1997, OMB issued revisions to OMB Circular A-133 (62 FR 35278) to implement the 1996 Amendments, extend the circular's coverage to States, local governments, and Indian tribal governments, and rescind OMB Circular A-128. On June 27, 2003, OMB amended OMB Circular A-133 (68 FR 38401) to increase the audit threshold to an aggregate expenditure of \$500,000 in Federal funds and to make changes in the thresholds for cognizant and oversight agencies. Those changes took effect for fiscal years ending after December 31, 2003. OMB further amended the circular on June 26, 2007 (72 FR 35080) to (1) update internal control terminology and related definitions

1 and (2) simplify the auditee reporting package submission requirement. On December 26,
2 2013, OMB Circular A-133 was superseded by the issuance of 2 CFR part 200, subpart F.
3 Among other things, those changes increased the audit threshold to \$750,000 for auditee
4 fiscal years beginning on or after December 26, 2014 and made changes to the major
5 program determination process. The Compliance Supplement (also referred to as the
6 “Uniform Guidance”) is based on the requirements of the 1996 Amendments and 2 CFR
7 part 200, subpart F, which provide for the issuance of a compliance supplement to assist
8 auditors in performing the required audits. The Supplement also provides guidance to
9 assist auditors in determining compliance requirements relevant to the audit, audit
10 objectives, and suggested audit procedures for programs not included therein. For single
11 audits, the Compliance Supplement replaces agency audit guides and other audit
12 requirement documents for individual Federal programs. Throughout the Uniform
13 Guidance, the word “must,” when used in conjunction with auditor responsibilities,
14 means that the auditor is required to do what the statement indicates. Use of the term
15 “should,” when addressing auditor responsibilities, indicates a recommended action or
16 approach. The issuance of the Compliance Supplement referenced herein is effective for
17 audits of fiscal years beginning after June 30, 2015, and supersedes the Compliance
18 Supplement dated June 30, 2015. 2 CFR part 200, subpart F, describes the non-Federal
19 entity’s responsibilities for managing Federal assistance programs. (2 CFR subpart F
20 section 200.514) governs the auditor’s responsibility with respect to the scope of audit (2
21 CFR subpart F section 200.215) sets mandatory reporting requirements for auditors
22 relating to audit findings and questioned costs, (2 CFR subpart F section 200.516) sets the
23 requirements for auditor’s presentation of audit finding detail and clarity, (2 CFR subpart
24 F section 200.518) sets the criteria for major program determination (2 CFR subpart F
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1 section 200.519) sets the criteria for federal program risk, (2 CFR subpart F section
2 200.520) sets the requirements for classification of federal auditee risk. Auditors are
3 required to follow the provisions of 2 CFR part 200, subpart F, and the Supplement.
4 Auditors must consider the Supplement and the referenced laws, regulations, and OMB
5 Circulars/Uniform Guidance (whether codified by Federal agencies in agency regulations
6 or adopted or implemented by other means) in determining the compliance requirements
7 that could have a direct and material effect on the programs receiving in excess of
8 \$750,000 in federal financial assistance. Although the focus of the Supplement is on
9 compliance requirements that could have a direct and material effect on a major program,
10 auditors also have responsibility under Generally Accepted Government Auditing
11 Standards (GAGAS) for other requirements when specific information comes to the
12 auditors' attention that provides evidence concerning the existence of possible
13 noncompliance that could have a material indirect effect on a major program. During the
14 period covered by the Supplement, most non-Federal entities will have Federal awards
15 expended that are subject to requirements from both the OMB Circulars for federal
16 awards made prior to December 26, 2014 and the Uniform Guidance for federal awards
17 made on or after December 26, 2014. The Uniform Guidance is effective for Federal
18 awards made on or after December 26, 2014 and in incremental funding where Federal
19 agencies change the award terms and conditions. The effective date of the Compliance
20 Supplement for sub-awards is the same as the effective date of the Federal award from
21 which the sub-award is made. The AICPA issued Statement on Auditing Standards (SAS)
22 No. 112, *Communicating Internal Control Related Matters Identified in an Audit*
23 (AICPA, Professional Standards, vol. 1, AU 325), which became effective for audits of
24 periods ending on or after December 15, 2006. With regard to internal control over
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1 financial reporting, the SAS introduced and defined the term “control deficiency,”
2 replaced the term “reportable condition” with “significant deficiency.” On June 26, 2007
3 the GAO issued a revision to Government Auditing Standards (GAS) also known as the
4 Generally Accepted Government Auditing Standards (GAGAS) and posted a related
5 notice to its Web site that required the new internal control terminology and definitions to
6 be used in all financial audits performed under GAS as of the effective date of SAS 112.
7 Therefore, to be consistent with the revisions to professional auditing standards,
8 references to “reportable condition” and “material weakness” in internal control over
9 financial reporting related to the audit of the financial statements in Circular A-133 were
10 replaced by the terms “significant deficiency” and “material weakness” as those terms are
11 defined in SAS 112 and GAS. This change was effective for single audits of periods
12 ending on or after December 15, 2006. In section 2.15 GAGAS uses two categories of
13 requirements, identified by specific terms, to describe the degree of responsibility they
14 impose on auditors and audit organizations, as follows: Unconditional requirements:
15 Auditors and audit organizations must comply with an unconditional requirement in all
16 cases where such requirement is relevant. GAGAS uses the word “must” to indicate an
17 unconditional requirement. Presumptively mandatory requirements: Auditors and audit
18 organizations must comply with a presumptively mandatory requirement in all cases
19 where such a requirement is relevant except in rare circumstances. GAGAS uses the word
20 “should” to indicate a presumptively mandatory requirement.
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STATEMENT OF FACTS

6. On September 26, 2006 in Sonoma County, the offices of the County Auditor-Controller and Treasurer-Tax Collector were combined into a single office by order of the Sonoma County Board of Supervisors. The Generally Accepted Government Auditing Standards sections 3.01-3.04 require that the auditor maintain the independence of both mind and appearance, defined as the both the state of mind that permits the performance of an audit without being affected by influences that compromise professional judgments and the absence of circumstances that would cause a reasonable and informed third party having knowledge of the relevant information to reasonably conclude that the integrity, objectivity, or professional skepticism of an audit organization have been compromised. (plaintiff declaration pgh.4).

7. On March 13, 2007 members of the Auditor-Controller-Treasurer-Tax Collector office Rob Boitano and Johnathan Kaldec were appointed as Sonoma County representatives to the California County Tobacco Securitization Agency. Rob Boitano remained in that position until October of 2012 as did Johnathan Kaldec until at least October 21 2014. (plaintiff declaration pgh.5 Exhibit "A" pgs.1,2) Auditors performing work in accordance with the Generally Accepted Government Auditing Standards are expressly prohibited from the performance of investment advisory and management services for audited entity funds in section 3.58 (c)(1).

8. The interview questions for the position of Sonoma County Auditor-Controller-Treasurer-Tax Collector (Exhibit "G" plaintiff declaration pgh. 16) which were developed according to criteria set out by the Sonoma County Board of Supervisors

(exhibit "F" plaintiff declarations pgh.12) and attached to the agenda of the December 12, 2011 Sonoma County Board of Supervisors Meeting (exhibit "B") inquire about the performance of non-audit activities and responsibilities expressly prohibited to auditors by unconditional requirements of Generally Accepted Government Auditing Standards (plaintiff declaration pgh. 16, exhibit "G").

9. The three applications to the position of Sonoma County Auditor-Controller-Treasurer-Tax Collector attached to the agenda of the December 12, 2011 Sonoma County Board of Supervisors meeting (Exhibit "F" pg.2, plaintiff declarations pgh.12) at which interviews were conducted, were from then Interim Sonoma County auditor-Controller-Treasurer-Tax Collector Donna Dunk (Exhibit "C", plaintiff declarations pgh.9), then Orange County Auditor-Controller David Sundstrom (Exhibit "D", plaintiff declarations pgh.10), and former Colorado Springs CFO/Financial and Administrative Services Director Terri Valasquez (Exhibit "E", plaintiff declarations pgh.10). The qualifications listed by each of these candidates, (plaintiff declarations pghs.13,14,15) which they presented according to criteria decided upon by the Sonoma County Board of Supervisors (exhibit "F" pg.1, plaintiff declarations pgh.12) each cite participation in non-audit services and responsibilities expressly prohibited by Generally Accepted Government Auditing Standards by the applicants in the performance of duties in their respective positions. All three applications cite responsibility for annual audits which were required to use the GAGAS framework and the performance of investment advisory and management services for audited entity funds, voting empowered board memberships on audit entity boards or committees, the implementation of IT systems and day to day monitoring relevant to material source documentation of audited entity records, and strategic

1 direction and policy making authority for audited entities all of which are expressly
2 prohibited non-audit services and responsibilities by GAGAS in sections 3.35, 3.36, 3.54,
3 3.56, and 3.58.

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5 10. The details of audit findings mandated by 2 CFR part 200 Subpart F are not provided by
6 the independent auditors for Finding 2017-001 in the Sonoma County Single Audit
7 Report for the Fiscal Year Ended June 30, 2017. The auditors report no questioned costs
8 and do not perform audit follow up procedures as outlined in 2 CFR part 200 Subpart F.
9 (Exhibit "H" p.18, plaintiff declaration pgh.24, 27).
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12 11. The HOME Sonoma County FAQ attachment from the April,17 2019 HOME Sonoma
13 County Leadership Council meeting (exhibit "J" plaintiff declarations pgh.31) show on
14 pages 3 and 4 that as of March 21, 2019 a total of 8 out of 23 organizations funded as part
15 of Sonoma County's Continuum of Care were unaudited. The upper left hand corner on
16 pg.1 shows that two current Sonoma County Supervisors, Susan Gorin and Lynda
17 Hopkins, are members of the HOME Sonoma County Leadership Council.
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CLAIMS

First Claim

Federal Law: 15 U.S.C. §1

Defendants: Sonoma County Auditor-Controller-Treasurer-Tax Collector,
Sonoma County Board of Supervisors

1. 15 U.S.C. §1 prohibits every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations. The Sonoma County Board of Supervisors' consolidation of financial responsibility in a single office for Sonoma County Auditor, Controller, Treasurer and Tax Collector , which began on September 26, 2006 and which has been ongoing since that date (plaintiff statement of fact pgh.6 exhibit "A"), constitutes an illegal combination in restraint of commerce. The commerce restrained relates to the effective and accountable administration of government contracts and grant agreements meant to benefit the citizens of Sonoma County, the funds for which are collected, received, distributed, accounted for and audited by that single office. The consolidation of these responsibilities violates, *inter alia*, 15 U.S.C. §1 by effectively charging the auditor with the responsibility to report and correct himself for instances of waste, fraud and abuse in the administration of government grant and contract agreements. Examples of misconduct in financial administration and reporting responsibilities related to this consolidation of duties include but are not limited to the failure by the Sonoma County Board of Supervisors and the office of the Sonoma County Auditor-Controller-Treasurer-Tax Collector to produce the Sonoma County's Annual Single Audit report in accordance with the Generally Accepted Government Auditing Standards intended to

1 ensure independence and integrity in financial reporting. As a resident of Sonoma County
 2 since 2008, who experienced homelessness for a period of one year in Sonoma County in
 3 2010, who except for a roughly 2 year period between 2013 and 2016, has rented housing
 4 in Sonoma County from 2008 to the present date in one of the most expensive rental
 5 markets in the country, the plaintiff is among the intended beneficiaries of the many
 6 services provided for by the government contracts and grant agreements meant to
 7 stabilize the housing market he rents in and otherwise provide for a socially and
 8 economically stable environment. The plaintiff asserts that but for the grossly negligent
 9 auditing and accounting practices directly resulting from the defendants' unlawful
 10 combination in restraint of commerce, the injuries to the plaintiff's social and economic
 11 standing would not have occurred.

17 **Second Claim**

18 Federal Law: 15 USC§2

19 Defendants: Sonoma County Auditor-Controller-Treasurer-Tax Collector,

20 Sonoma County Board of Supervisors

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- 24 2. 15 USC§2 applies to every person who shall monopolize, attempt to monopolize or
 25 combine or conspire with any other person or persons to monopolize any part of the trade
 26 or commerce among the several states. 31 U.S.C. §7502 as well as OMB Circular A-133
 27 and the Compliance Supplement require that the Generally Accepted Government
 28 Auditing Standards be followed in audits of state and local governments and non-profit

1 entities that receive federal awards. (plaintiff statement of fact, pgh. 5). The Generally
2 Accepted Government Auditing Standards require auditors of government contracts and
3 grant agreements to be independent both in mind and in appearance from the entities they
4 audit and provide a clear framework for identifying both the unacceptable impairment of
5 auditor independence and threats to the impairment of auditor independence, which
6 includes a list of expressly prohibited non-audit activities for auditors performing work in
7 accordance with GAGAS, which, if participated in automatically impair auditor
8 independence in to such an extent that no safeguards may reduce those threats to an
9 acceptable level. The legal requirement of that independence is intended to create
10 credibility, quality control and assurance in the areas of trade and commerce that the
11 funds in government contract and grant agreements are intended to affect. The plaintiff
12 claims that a preponderance of the evidence demonstrates the ongoing knowledge of and
13 specific intention to create, a restraint in commerce related to government contract and
14 grant agreements by the defendants through their illegal combination and continuing
15 operation of the Auditor-Controller-Treasurer-Tax Collector duties in Sonoma County.
16 As a resident of Sonoma County since 2008, who experienced homelessness for a period
17 of one year in Sonoma County in 2010, who except for a roughly 2 year period between
18 2013 and 2016, has rented housing in Sonoma County from 2008 to the present date in
19 one of the most expensive rental markets in the country, the plaintiff is among the
20 intended beneficiaries of the many services provided for by the government contracts and
21 grant agreements meant to stabilize the housing market he rents in and otherwise provide
22 for a socially and economically stable environment. The plaintiff asserts that but for the
23 grossly negligent auditing and accounting practices directly resulting from the
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1 defendants' unlawful combination in restraint of trade, the injuries to the plaintiff's social
2 and economic standing would not have occurred.

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5 **DEMANDS FOR RELIEF**

- 6 1. The plaintiff asks the court for administrative relief through the separation of the
7 Auditor-Controller-Treasurer-Tax Collector Offices into units which are structurally
8 independent as defined by the requirements of the Generally Accepted Government
9 Auditing Standards and outlined by the California Government Code Title 3 section
10 2400.
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13 2. The plaintiff asks the court for monetary relief for damages done to him as a citizen
14 of Sonoma County from this illegal combination in the restraint of trade relating to
15 his costs of housing, his overall economic standing and general well being. The
16 plaintiff leaves dollar amount determination to the court's discretion relating to the
17 severity of its judgment of the defendant's violations of the anti-trust laws and their
18 effects.
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21 Date:

7/10/19

22 Sign Name:

George Uberti

23 Print Name:

George Uberti